

§ 1.1402(c)-1

this section are treated as paid, see paragraph (b)(2)(iii) of this section.

(d) *Nonresident aliens.* A nonresident alien individual never has self-employment income. While a nonresident alien individual who derives income from a trade or business carried on within the United States, Puerto Rico, the Virgin Islands, Guam, or American Samoa (whether by agents or employees, or by a partnership of which he is a member) may be subject to the applicable income tax provisions on such income, such nonresident alien individual will not be subject to the tax on self-employment income, since any net earnings which he may have from self-employment do not constitute self-employment income. For the purpose of the tax on self-employment income, an individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, or, for taxable years beginning after 1960, of Guam or American Samoa is not considered to be a nonresident alien individual.

[T.D. 6691, 28 FR 12796, Dec. 3, 1963, as amended by T.D. 7333, 39 FR 4447, Dec. 24, 1974]

§ 1.1402(c)-1 Trade or business.

In order for an individual to have net earnings from self-employment, he must carry on a trade or business, either as an individual or as a member of a partnership. Except for the exclusions discussed in §§ 1.1402(c)-2 to 1.1402(c)-7, inclusive, the term "trade or business", for the purpose of the tax on self-employment income, shall have the same meaning as when used in section 162. An individual engaged in one of the excluded activities specified in such sections of the regulations may also be engaged in carrying on activities which constitute a trade or business for purposes of the tax on self-employment income. Whether or not he is also engaged in carrying on a trade or business will be dependent upon all of the facts and circumstances in the particular case. An individual who is a crew leader, as defined in section 3121(o) (see such section and the regulations thereunder in part 31 of this chapter (Employment Tax Regulations)), is considered to be engaged in carrying on a trade or business with respect to services performed by him

26 CFR Ch. I (4-1-14 Edition)

after 1956 in furnishing individuals to perform agricultural labor for another person or services performed by him after 1956 as a member of the crew.

[T.D. 6978, 33 FR 15937, Oct. 30, 1968]

§ 1.1402(c)-2 Public office.

(a) *In general*—(1) *General rule.* Except as otherwise provided in subparagraph (2) of this paragraph, the performance of the functions of a public office does not constitute a trade or business.

(2) *Fee basis public officials*—(i) *In general.* If an individual receives fees after 1967 for the performance of the functions of a public office of a State or a political subdivision thereof for which he is compensated solely on a fee basis, and if the service performed in such office is eligible for (but is not made the subject of) an agreement between the State and the Secretary of Health, Education, and Welfare pursuant to section 218 of the Social Security Act to extend social security coverage thereto, the service for which such fees are received constitutes a trade or business within the meaning of section 1402(c) and § 1.1402(c)-1. If an individual performs service for a State or a political subdivision thereof in any period in more than one position, each position is treated separately for purposes of the preceding sentence. See also paragraph (f) of § 1.1402(c)-3 relating to the performance of service by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis.

(ii) *Election with respect to fees received in 1968.* (A) Any individual who in 1968 receives fees for service performed by him with respect to the functions of a public office of a State or a political subdivision thereof in any period in which the functions are performed in a position compensated solely on a fee basis may elect, if the performance of the service for which such fees are received constitutes a trade or business pursuant to the provisions of subdivision (i) of this subparagraph, to have such performance of service treated as excluded from the term "trade or business" for the purpose of the tax on self-employment income, pursuant to the provisions of section 122(c)(2) of the Social Security Amendments of 1967 (as quoted in § 1.1402(c)). Such election